

AMENDED IN SENATE JULY 6, 2000

AMENDED IN SENATE JUNE 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2509

Introduced by Assembly Member Steinberg

February 24, 2000

An act to amend Sections 92, 98.1, 98.2, 98.7, 203.1, 218.5, 226, 226.3, 240, 350, 351, 1174, 1174.5, 1194.2, and 1197.1 of, and to add Sections 100.6, 100.7, 218.6, 226.7, 226.8, and 245 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2509, as amended, Steinberg. Employment: remedies for employment law violations.

Existing law authorizes the Labor Commissioner, his or her deputies, and agents to issue subpoenas for the purpose of carrying out the laws which the Division of Labor Standards Enforcement is responsible for enforcing.

This bill would authorize using a prescribed notice in lieu of a subpoena in adjudicatory proceedings before the Labor Commissioner to compel attendance of a party, person for whose benefit the proceeding is prosecuted or defended, or any officer, director, or managing agent thereof. The notice would have the same force and effect as a subpoena.

Existing law authorizes the Labor Commissioner to conduct administrative hearings and issue orders, decisions, and awards for recovery of wages, penalties, and other demands

for compensation properly before the Division of Labor Standards Enforcement or the commissioner. Existing law requires these awards for unpaid wages to accrue interest at a specified adjusted annual rate determined under the tax laws.

This bill would instead require this rate to be the same as the legal rate of interest payable upon a contract obligation in default where the contract does not otherwise specify the rate of interest.

Existing law provides that any order, decision, or award made by the Labor Commissioner in these administrative proceedings may be appealed by filing an action in the municipal or superior court. If the appealing party is unsuccessful, existing law requires the court to award costs and attorney's fees to the other parties.

This bill would exempt those appeal proceedings from provisions respecting submission of certain matters in specified municipal and superior courts to mandatory arbitration. The bill would require employers filing such an appeal to post a prescribed undertaking and would provide for disposition thereof. The bill would require an award of costs and attorney's fees against an unsuccessful appellant regardless of whether the successful party is represented by his or her own attorney or by the Labor Commissioner.

Under existing law, any person may file a complaint for unlawful discharge or unlawful discrimination with the Labor Commissioner, who is empowered to provide prescribed relief if the complaint is found meritorious. Existing law requires that, if the Labor Commissioner dismisses such a complaint, the Labor Commissioner is required to notify the complainant of the right to bring a court action or to file a complaint against the state program with the United States Department of Labor.

This bill would specify that if a timely complaint is filed against the state program with the United States Department of Labor, the Labor Commissioner's decision dismissing the complaint is vacated pending issuance of findings by the United States Department of Labor. The bill would require the Labor Commissioner, within 15 days of receiving those findings, either to notify the parties of the reopening of the



investigation or to issue a new determination of the complaint. The bill would also expressly provide that an employee may file a civil judicial action without exhausting any administrative remedy under the jurisdiction of the Labor Commissioner, and may in such a civil action seek any relief that would be available from the Labor Commissioner. The bill would make the limitation period for filing a complaint with the Labor Commissioner inapplicable to such a civil action.

The bill would make defined substantial shareholders and parents subject to liability for wages unpaid and owed by a corporation, as specified. The bill would make successors to an employer liable for unpaid wages owed by the employer under specified circumstances.

Under existing law, an employer in the building and construction industry is liable for a penalty of up to 30 days' wages and fringe benefits to any employee paid by a check, draft, or voucher that is drawn on a nonexistent account or that is dishonored for insufficient funds if the instrument is presented for payment within 30 days of receipt. This penalty does not apply if the employer can establish that the violation was unintentional.

This bill would make this penalty applicable to all employers and would make related conforming and technical, nonsubstantive changes.

Under existing law, the prevailing party, with certain exceptions, is entitled to an award of attorney's fees in an action brought for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.

This bill would add an express exception for employee actions to recover underpayment of the minimum wage or overtime wages, in which a prevailing employee but not the employer is expressly authorized to recover attorney's fees. The bill would also require the court, in an action to recover unpaid wages, to award interest, as specified.

Under existing law, employers are required to provide employees semimonthly, with payment of wages, an itemized statement listing gross wages, total hours worked of employees paid by the hour, specified deductions, net wages, and certain other information. Violation of these

requirements is a misdemeanor. Under existing law, an employee suffering injury as a result of the employer's knowing or intentional failure to comply with this requirement is entitled to recover the greater of actual damages or \$100, plus costs and reasonable attorney's fees.

This bill would provide that total hours need not be disclosed for salaried employees exempt from payment of overtime compensation. The bill would impose a state-mandated local program by requiring disclosure of the number of piece-rate units and the applicable piece rate for employees paid on that basis and by requiring disclosure of all applicable hourly rates and the number of hours worked by the employee at each rate. The bill would revise the liability of employers for knowing or intentional noncompliance with this disclosure requirement to entitle an aggrieved employee to recover the greater of actual damages or penal damages of \$100 for each pay period in which the violation occurs up to \$10,000, plus costs and reasonable attorney's fees. The bill would authorize an aggrieved employee to seek recovery in administrative proceedings before the Labor Commissioner or in a civil action.

Existing law makes employers liable for prescribed civil penalties, based upon the number of employees and number of citations, for failure to provide employee wage deduction statements or keep certain employee pay records.

This bill would specify that if the employer fails to maintain records identifying the affected employees, these penalties are to be computed in accordance with a prescribed formula. The bill would make a technical, clarifying change in related provisions that specify employer record-keeping requirements.

Existing law authorizes the Industrial Welfare Commission to adopt orders respecting wages, hours, and working conditions.

This bill would make any employer that requires any employee to work during a meal or rest period mandated by an order of the commission subject to a civil penalty of \$50 per violation and liable to the employee for twice the employee's average hourly or piecework pay. An aggrieved employee could bring an administrative action before the Labor



Commissioner or could commence a civil action for recovery of these amounts, and if the employee prevails in such a civil action, the employee would be entitled to recover attorney's fees.

This bill would provide that if an employer fails to provide and maintain necessary tools or equipment in violation of an applicable wage order of the Industrial Welfare Commission and an employee purchases the tools or equipment in order to perform his or her work, the employer shall either purchase the tools or equipment from the employee in an amount equal to the price paid by the employee or pay sufficient wages to the employee to qualify for an exemption to the wage order, as provided.

Existing law authorizes the Labor Commissioner to require an employer to deposit a bond if the employer is convicted of violating specified provisions respecting paying employees or if a judgment for unpaid wages against the employer remains unsatisfied for 10 days after expiration of the appeal period with no appeal on file. The bond is conditioned on the employer paying employees for up to 6 months in compliance with specified laws and payment of any judgment for unpaid wages.

This bill would revise these provisions to make the authorization for a bond requirement applicable to unpaid judgments for interest, penalties, or other demands for compensation within the jurisdiction of the Labor Commissioner, in addition to judgments for unpaid wages. The bond would also be conditioned on payment of such an unsatisfied judgment. The bill would make conforming related changes.

Under existing law, the Labor Commissioner is empowered to implement administrative proceedings for the recovery of unpaid wages and penalties.

This bill would provide that whenever the Labor Commissioner makes an award based upon a finding that the employer has engaged in a pattern or practice of violating wage and hour laws, the Labor Commissioner may require the employer to post a prescribed notice of the violation with specified information for not less than 60 days. The bill would specify a civil penalty for violation of the posting requirement.

Existing law prohibits employers from receiving or deducting gratuities intended for employees from wages otherwise payable. Violation is a misdemeanor. Under existing law, this prohibition is not applicable to an employee that has a guaranteed wage or salary that is at least the higher of the federal or state minimum wage.

This bill would delete the above exemption, thereby imposing a state-mandated local program. As so revised, the bill would make these provisions applicable to amounts paid by patrons directly to a dancer subject to specified orders of the commission. The bill would also impose a state-mandated local program by requiring employers to remit to their employees gratuities paid by credit card, without deduction for credit card fees, not later than the next regular payday following the date the credit card payment is authorized by the patron.

Existing law requires employers to keep specified payroll records.

This bill would require these payroll records to identify the number of piece-rate units earned by employees and any applicable piece rate paid to employees.

Existing law requires employers to keep records showing the names and addresses of employees and the ages of minor employees and makes an employer's willful failure to maintain these records or payroll records subject to a civil penalty of \$500.

This bill would revise the amount of the civil penalty to \$100 per employee for each payroll period up to a maximum of 3 years. The bill would also make these civil penalties applicable to an employer that fails to keep records required by wage orders of the commission.

Under existing law, an aggrieved employee, or the Department of Industrial Relations or its Division of Labor Standards Enforcement, with or without the employee's consent, may bring a civil action to recover unpaid minimum wages or overtime compensation, interest, costs, and reasonable attorney's fees. In these civil actions to recover unpaid minimum wages, the employee is entitled to additional damages equal to the unpaid wages and interest thereon, except that if the employer can show that the act or

omission giving rise to the violation was in good faith and that the employer had reasonable grounds for believing there was no violation, the court may refuse to award those damages.

This bill would make technical, clarifying changes in these provisions and also make them applicable to proceedings before the Labor Commissioner.

Under existing law, any employer or person who pays or causes to be paid less than the minimum wage prescribed by order of the commission is subject to prescribed civil penalties assessed and collected by the Labor Commissioner in proceedings initiated by the issuance of a citation.

This bill would include in these proceedings restitution of the underpaid wages, interest, and statutory liquidated damages.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 92 of the Labor Code is amended
2 to read:

3 92. (a) The Labor Commissioner and his or her
4 deputies and agents may issue subpoenas to compel the
5 attendance of witnesses and parties and the production of
6 books, papers and records; administer oaths; examine
7 witnesses under oath; take the verification,
8 acknowledgment, or proof of written instruments; and
9 take depositions and affidavits for the purpose of carrying
10 out the provisions of this code and all laws that the
11 division is to enforce.

12 (b) In any adjudicatory hearing before the Labor
13 Commissioner, a notice in lieu of a subpoena may be used
14 to compel the attendance of a party, a person for whose
15 benefit the proceeding is prosecuted or defended, or any

1 officer, director, or managing agent of a party or such a
2 person. The service of a subpoena in these cases is not
3 required if written notice requesting the witness to
4 attend, with the time and place of the hearing, is served
5 upon the party or person, or his or her attorney of record.
6 The notice shall be served at least 10 days before the time
7 requested for attendance unless the hearing officer
8 prescribes a shorter time. The giving of the notice shall
9 have the same effect as service of a subpoena on the
10 witness. Section 1013 of the Code of Civil Procedure shall
11 be applicable to service of these notices.

12 (c) The notice specified in subdivision (b) may
13 include a request that the party or person bring with him
14 or her books, papers, records, documents, or other things.
15 The notice shall state the exact materials or things to be
16 produced and that the party or person has them in his or
17 her possession or under his or her control.

18 (d) A party or person required to attend or produce
19 records at a hearing pursuant to notice under subdivision
20 (b) may object to the notice as provided in Section
21 11450.30 of the Government Code.

22 (e) Notice under subdivision (b) has the same force
23 and effect as a subpoena issued by the Labor
24 Commissioner pursuant to subdivision (a) and may be
25 enforced, and willful disobedience punished, in
26 accordance with Section 93.

27 (f) Any subpoena specified in subdivision (a) or any
28 notice specified in subdivision (b) may include a request
29 that the party or person deliver to the Labor
30 Commissioner and to the requesting party a copy of the
31 books, papers, records, documents, or other things
32 subject to the subpoena or notice not less than five days
33 prior to the hearing.

34 SEC. 2. Section 98.1 of the Labor Code is amended to
35 read:

36 98.1. (a) Within 15 days after the hearing is
37 concluded, the Labor Commissioner shall file in the office
38 of the division a copy of the order, decision, or award. The
39 order, decision, or award shall include a summary of the
40 hearing and the reasons for the decision. Upon filing of

1 the order, decision, or award, the Labor Commissioner
2 shall serve a copy of the decision personally or by
3 first-class mail on the parties. The notice shall also advise
4 the parties of their right to appeal the decision or award
5 and further advise the parties that failure to do so within
6 the period prescribed by this chapter shall result in the
7 decision or award becoming final and enforceable as a
8 judgment by the appropriate municipal or superior court,
9 in accordance with the appropriate rules of jurisdiction.

10 (b) For the purpose of this section, an award shall
11 include any sums found owing, damages proved, and any
12 penalties awarded pursuant to this code.

13 (c) All awards granted pursuant to a hearing under
14 this chapter shall accrue interest on all due and unpaid
15 wages at the same rate as prescribed by subdivision (b) of
16 Section 3289 of the Civil Code. The interest shall accrue
17 until the wages are paid from the date that the wages
18 were due and payable as provided in Part 1 (commencing
19 with Section 200) of Division 2.

20 SEC. 3. Section 98.2 of the Labor Code is amended to
21 read:

22 98.2. (a) Within 10 days after service of notice of an
23 order, decision, or award the parties may seek review by
24 filing an appeal to the municipal or superior court, in
25 accordance with the appropriate rules of jurisdiction,
26 where the appeal shall be heard de novo. A copy of the
27 appeal request shall be served upon the Labor
28 Commissioner by the appellant. For purposes of
29 computing the 10-day period after service, Section 1013
30 of the Code of Civil Procedure shall be applicable. The
31 appeal proceedings in the municipal or superior court
32 shall be exempt from Section 1141.11 of the Code of Civil
33 Procedure.

34 (b) Whenever an employer files an appeal pursuant to
35 this section, the employer shall post an undertaking with
36 the reviewing court in the amount of the order, decision,
37 or award. The undertaking shall consist of an appeal bond
38 issued by a licensed surety or a cash deposit with the court
39 in the amount of the order, decision, or award. The
40 employer shall provide written notification to the other

1 parties and the Labor Commissioner of the posting of the
2 undertaking. The undertaking shall be on the condition
3 that, if any judgment is entered in favor of the employee,
4 the employer shall pay the amount owed pursuant to the
5 judgment, and if the appeal is withdrawn or dismissed
6 without entry of judgment, the employer shall pay the
7 amount owed pursuant to the order, decision, or award of
8 the Labor Commissioner unless the parties have executed
9 a settlement agreement for payment of some other
10 amount, in which case the employer shall pay the amount
11 that the employer is obligated to pay under the terms of
12 the settlement agreement. If the employer fails to pay the
13 amount owed within 10 days of entry of the judgment,
14 dismissal, or withdrawal of the appeal, or the execution of
15 a settlement agreement, a portion of the undertaking
16 equal to the amount owed, or the entire undertaking if
17 the amount owed exceeds the undertaking, shall be
18 forfeited to the employee.

19 (c) If the party seeking review by filing an appeal to
20 the municipal or superior court is unsuccessful in the
21 appeal, the court shall determine the costs and reasonable
22 attorney's fees incurred by the other parties to the appeal,
23 regardless of whether the successful party is represented
24 by his or her attorney or by the Labor Commissioner
25 pursuant to Section 98.4, and shall assess that amount as
26 a cost upon the party filing the appeal.

27 (d) If no notice of appeal of the order, decision, or
28 award is filed within the period set forth in subdivision
29 (a), the order, decision, or award shall, in the absence of
30 fraud, be deemed the final order.

31 (e) The Labor Commissioner shall file, within 10 days
32 of the order becoming final pursuant to subdivision (d),
33 a certified copy of the final order with the clerk of the
34 municipal or superior court, in accordance with the
35 appropriate rules of jurisdiction, of the appropriate
36 county unless a settlement has been reached by the
37 parties and approved by the Labor Commissioner.
38 Judgment shall be entered immediately by the court
39 clerk in conformity therewith. The judgment so entered
40 shall have the same force and effect as, and shall be

1 subject to all of the provisions of law relating to, a
2 judgment in a civil action, and may be enforced in the
3 same manner as any other judgment of the court in which
4 it is entered. Enforcement of the judgment shall receive
5 court priority.

6 (f) In order to ensure that judgments are satisfied, the
7 Labor Commissioner may serve upon the judgment
8 debtor, personally or by first-class mail at the last known
9 address of the judgment debtor listed with the division,
10 a form similar to, and requiring the reporting of the same
11 information as, the form approved or adopted by the
12 Judicial Council for purposes of subdivision (a) of Section
13 116.830 of the Code of Civil Procedure to assist in
14 identifying the nature and location of any assets of the
15 judgment debtor.

16 The judgment debtor shall complete the form and
17 cause it to be delivered to the division at the address listed
18 on the form within 35 days after the form has been served
19 on the judgment debtor, unless the judgment has been
20 satisfied. In case of willful failure by the judgment debtor
21 to comply with this subdivision, the division or the
22 judgment creditor may request the court to apply the
23 sanctions provided in Section 708.170 of the Code of Civil
24 Procedure.

25 (g) Notwithstanding subdivision (e), the Labor
26 Commissioner may stay execution of any judgment
27 entered upon an order, decision, or award that has
28 become final upon good cause appearing therefor and
29 may impose the terms and conditions of the stay of
30 execution. A certified copy of the stay of execution shall
31 be filed with the clerk entering the judgment.

32 (h) When a judgment is satisfied in fact, otherwise
33 than by execution, the Labor Commissioner may, upon
34 the motion of either party or on its own motion, order
35 entry of satisfaction of judgment. The clerk of the court
36 shall enter a satisfaction of judgment upon the filing of a
37 certified copy of the order.

38 (i) The Labor Commissioner shall make every
39 reasonable effort to ensure that judgments are satisfied,
40 including taking all appropriate legal action and

1 requiring the employer to deposit a bond as provided in
2 Section 240.

3 (j) The judgment creditor, or the Labor
4 Commissioner as assignee of the judgment creditor, shall
5 be entitled to court costs and reasonable attorney fees for
6 enforcing the judgment that is rendered pursuant to this
7 section.

8 SEC. 4. Section 98.7 of the Labor Code is amended to
9 read:

10 98.7. (a) Any person who believes that he or she has
11 been discharged or otherwise discriminated against in
12 violation of any provision of this code under the
13 jurisdiction of the Labor Commissioner may file a
14 complaint with the division within six months after the
15 occurrence of the violation. The six-month period may be
16 extended for good cause. The complaint shall be
17 investigated by a discrimination complaint investigator in
18 accordance with this section. The Labor Commissioner
19 shall establish procedures for the investigation of
20 discrimination complaints. A summary of the procedures
21 shall be provided to each complainant and respondent at
22 the time of initial contact. The Labor Commissioner shall
23 inform complainants charging a violation of Section 6310
24 or 6311, at the time of initial contact, of his or her right to
25 file a separate, concurrent complaint with the United
26 States Department of Labor within 30 days after the
27 occurrence of the violation.

28 (b) Each complaint of unlawful discharge or
29 discrimination shall be assigned to a discrimination
30 complaint investigator, who shall prepare and submit a
31 report to the Labor Commissioner based on an
32 investigation of the complaint. The Labor Commissioner
33 may designate the chief deputy or assistant Labor
34 Commissioner or the chief counsel to receive and review
35 the reports. The investigation shall include, where
36 appropriate, interviews with the complainant,
37 respondent, and any witnesses who may have
38 information concerning the alleged violation, and a
39 review of any documents that may be relevant to the
40 disposition of the complaint. The identity of witnesses



1 shall remain confidential unless the identification of a
2 witness becomes necessary to proceed with the
3 investigation or to prosecute an action to enforce a
4 determination. The investigation report submitted to the
5 Labor Commissioner or designee shall include the
6 statements and documents obtained in the investigation
7 and the findings of the investigator concerning whether
8 a violation occurred. The Labor Commissioner may hold
9 an investigative hearing whenever the Labor
10 Commissioner determines, after review of the
11 investigation report, that a hearing is necessary to fully
12 establish the facts. In the hearing the investigation report
13 shall be made a part of the record and the complainant
14 and respondent shall have the opportunity to present
15 further evidence. The Labor Commissioner shall issue,
16 serve, and enforce any necessary subpoenas.

17 (c) If the Labor Commissioner determines a violation
18 has occurred, he or she shall notify the complainant and
19 respondent and direct the respondent to cease and desist
20 from the violation and take action as deemed necessary
21 to remedy the violation, including, where appropriate,
22 rehiring or reinstatement, reimbursement of lost wages
23 and interest thereon, payment of reasonable attorney's
24 fees associated with any hearing held by the Labor
25 Commissioner in investigating the complaint, and the
26 posting of notices to employees. If the respondent does
27 not comply with the order within 10 working days
28 following notification of the Labor Commissioner's
29 determination, the Labor Commissioner shall bring an
30 action promptly in an appropriate court against the
31 respondent. If the Labor Commissioner fails to bring an
32 action in court promptly, the complainant may bring an
33 action against the Labor Commissioner in any
34 appropriate court for a writ of mandate to compel the
35 Labor Commissioner to bring an action in court against
36 the respondent. If the complainant prevails in his or her
37 action for a writ of mandate, the court shall award the
38 complainant court costs and reasonable attorney's fees,
39 notwithstanding any other provision of law. Regardless of
40 any delay in bringing an action in court, the Labor

1 Commissioner shall not be divested of jurisdiction. In the
2 action, the court may permit the claimant to intervene as
3 a party plaintiff to the action and shall have jurisdiction,
4 for cause shown, to restrain the violation and to order all
5 appropriate relief. Appropriate relief includes, but is not
6 limited to, rehiring or reinstatement of the complainant,
7 reimbursement of lost wages and interest thereon, and
8 any other compensation or equitable relief that is
9 appropriate under the circumstances of the case. The
10 Labor Commissioner shall petition the court for
11 appropriate temporary relief or a restraining order unless
12 he or she determines good cause exists for not doing so.

13 (d) If the Labor Commissioner determines no
14 violation has occurred, he or she shall notify the
15 complainant and respondent and shall dismiss the
16 complaint. The Labor Commissioner may direct the
17 complainant to pay reasonable attorney's fees associated
18 with any hearing held by the Labor Commissioner if the
19 Labor Commissioner finds the complaint was frivolous,
20 unreasonable, groundless, and was brought in bad faith.
21 The complainant may, after notification of the Labor
22 Commissioner's determination to dismiss a complaint,
23 bring an action in an appropriate court, which shall have
24 jurisdiction to determine whether a violation occurred,
25 and if so, to restrain the violation and order all
26 appropriate relief to remedy the violation. Appropriate
27 relief includes, but is not limited to, rehiring or
28 reinstatement of the complainant, reimbursement of lost
29 wages and interest thereon, and other compensation or
30 equitable relief that is appropriate under the
31 circumstances of the case. When dismissing a complaint,
32 the Labor Commissioner shall advise the complainant of
33 his or her right to bring an action in an appropriate court
34 if he or she disagrees with the determination of the Labor
35 Commissioner, and in the case of an alleged violation of
36 Section 6310 or 6311, to file a complaint against the state
37 program with the United States Department of Labor.
38 The filing of a timely complaint against the state program
39 with the United States Department of Labor shall vacate
40 the Labor Commissioner's dismissal of the person's

1 complaint against the respondent, pending the issuance
2 of findings by the United States Department of Labor.
3 Within 15 days of the receipt of those findings the Labor
4 Commissioner shall notify the parties of the reopening of
5 the investigation of the person's complaint against the
6 respondent, or shall issue a new determination of the
7 complaint pursuant to subdivision (c) or this subdivision.

8 (e) The Labor Commissioner shall notify the
9 complainant and respondent of his or her determination
10 under subdivision (c) or (d) not later than 60 days after
11 the filing of the complaint. Determinations by the Labor
12 Commissioner under subdivision (c) or (d) may be
13 appealed by the complainant or respondent to the
14 Director of Industrial Relations within 10 days following
15 notification of the determination. The appeal shall set
16 forth specifically and in full detail the grounds upon
17 which the appealing party considers the Labor
18 Commissioner's determination to be unjust or unlawful,
19 and every issue to be considered by the director. The
20 director may consider any issue relating to the initial
21 determination and may modify, affirm, or reverse the
22 Labor Commissioner's determination. The director's
23 determination shall be the determination of the Labor
24 Commissioner. The director shall notify the complainant
25 and respondent of his or her determination within 10 days
26 of receipt of the appeal.

27 (f) The rights and remedies provided by this section
28 do not preclude an employee from pursuing any other
29 rights and remedies under any other provision of law. An
30 employee may file a civil judicial action without
31 exhausting his or her administrative remedies concerning
32 the alleged violation of any of the discrimination
33 provisions under the jurisdiction of the Labor
34 Commissioner, and may seek whatever relief would be
35 available from the Labor Commissioner under this
36 section, in addition to any other relief that may be
37 available under any other provision of law. The limitation
38 period for filing a complaint with the Labor
39 Commissioner under subdivision (a) shall not apply to

1 any civil action filed by an employee under this
2 subdivision.

3 SEC. 5. Section 100.6 is added to the Labor Code, to
4 read:

5 100.6. (a) As used in this section, “substantial
6 shareholder” and “parent” have the same meanings as in
7 Section 3717.

8 (b) In any proceeding under Section 98 in which
9 unpaid wages or penalties are claimed to be owed by a
10 corporation, the Labor Commissioner may cause
11 substantial shareholders and parents to be joined as
12 parties.

13 (c) In any action filed against a corporation for unpaid
14 wages or penalties pursuant to Section 98.3, 218.5, 1193.6,
15 or 1194, substantial shareholders and its parent may be
16 joined as defendants.

17 (d) In the event that the Labor Commissioner or the
18 court finds a corporation liable for unpaid wages or
19 penalties, the following persons shall be jointly and
20 severally liable with the corporation:

21 (1) The parent of the corporation.

22 (2) All substantial shareholders of the corporation or
23 its parent.

24 (e) The rights and remedies provided by this section
25 are not exclusive and do not preclude an employee or the
26 Labor Commissioner from pursuing any other rights and
27 remedies against any persons under any other provision
28 of law.

29 SEC. 6. Section 100.7 is added to the Labor Code, to
30 read:

31 100.7. A successor to any employer that owes wages to
32 former employees is liable for those wages if any of the
33 following are applicable:

34 (a) The successor uses substantially the same facilities
35 or workforce to produce substantially the same products
36 for substantially the same type of customers as the
37 predecessor employer.

38 (b) The successor shares the ownership, management,
39 control of labor relations, or interrelations of business
40 operations with the predecessor.



1 (c) The successor has in its employ in a managerial
2 capacity any person who directly or indirectly controlled
3 the wages, hours, or working conditions of the affected
4 employees of the predecessor employer.

5 (d) The successor is an individual who is an immediate
6 family member of any owner, partner, officer, or director
7 of the predecessor employer or of any person who had a
8 financial interest in the predecessor employer.

9 SEC. 7. Section 203.1 of the Labor Code is amended
10 to read:

11 203.1. If an employer pays an employee in the regular
12 course of employment or in accordance with Section 201,
13 201.5, 201.7, or 202 any wages or fringe benefits, or both,
14 by check, draft or voucher, which check, draft or voucher
15 is subsequently refused payment because the employer
16 or maker has no account with the bank, institution, or
17 person on which the instrument is drawn, or has
18 insufficient funds in the account upon which the
19 instrument is drawn at the time of its presentation, so long
20 as the same is presented within 30 days of receipt by the
21 employee of the check, draft or voucher, those wages or
22 fringe benefits, or both, shall continue as a penalty from
23 the due date thereof at the same rate until paid or until
24 an action therefor is commenced. However, those wages
25 and fringe benefits shall not continue for more than 30
26 days and this penalty shall not apply if the employer can
27 establish to the satisfaction of the Labor Commissioner or
28 an appropriate court of law that the violation of this
29 section was unintentional. This penalty is in addition to,
30 and independent and apart from, any other penalty in
31 this article.

32 SEC. 8. Section 218.5 of the Labor Code is amended
33 to read:

34 218.5. In any action brought for the nonpayment of
35 wages, fringe benefits, or health and welfare or pension
36 fund contributions, the court shall award reasonable
37 attorney's fees and costs to the prevailing party if any
38 party to the action requests attorney's fees and costs upon
39 the initiation of the action. This section shall not apply to
40 an action brought by the Labor Commissioner. This

1 section shall not apply to a surety issuing a bond pursuant
2 to Chapter 9 (commencing with Section 7000) of Division
3 3 of the Business and Professions Code or to an action to
4 enforce a mechanics lien brought under Chapter 2
5 (commencing with Section 3109) of Title 15 of Part 4 of
6 Division 3 of the Civil Code.

7 This section does not apply to any action for which
8 attorney's fees are recoverable under Section 1194.

9 SEC. 9. Section 218.6 is added to the Labor Code, to
10 read:

11 218.6. In any action brought for the nonpayment of
12 wages, the court shall award interest on all due and
13 unpaid wages at the rate of interest specified in
14 subdivision (b) of Section 3289 of the Civil Code, which
15 shall accrue from the date that the wages were due and
16 payable as provided in Part 1 (commencing with Section
17 200) of Division 2.

18 SEC. 10. Section 226 of the Labor Code is amended to
19 read:

20 226. (a) Every employer shall, semimonthly or at the
21 time of each payment of wages, furnish each of his or her
22 employees, either as a detachable part of the check, draft,
23 or voucher paying the employee's wages, or separately
24 when wages are paid by personal check or cash, an
25 itemized statement in writing showing (1) gross wages
26 earned, (2) total hours worked by the employee, except
27 for any employee whose compensation is solely based on
28 a salary and who is exempt from payment of overtime
29 under Section 515 or any applicable order of the
30 Industrial Welfare Commission, (3) the number of piece
31 rate units earned and any applicable piece rate if the
32 employee is paid on a piece-rate basis, (4) all deductions,
33 provided, that all deductions made on written orders of
34 the employee may be aggregated and shown as one item,
35 (5) net wages earned, (6) the inclusive dates of the period
36 for which the employee is paid, (7) the name of the
37 employee and his or her social security number, (8) the
38 name and address of the legal entity that is the employer,
39 and (9) all applicable hourly rates in effect during the pay

1 period and the corresponding number of hours worked at
2 each hourly rate by the employee.

3 The deductions made from payments of wages shall be
4 recorded in ink or other indelible form, properly dated,
5 showing the month, day, and year, and a copy of the
6 statement or a record of the deductions shall be kept on
7 file by the employer for at least three years at the place
8 of employment or at a central location within the State of
9 California.

10 An employer that is required by this code or any
11 regulation adopted pursuant to this code to keep the
12 information required by this section shall afford current
13 and former employees the right to inspect or copy the
14 records pertaining to that current or former employee,
15 upon reasonable request to the employer. The employer
16 may take reasonable steps to assure the identity of a
17 current or former employee. If the employer provides
18 copies of the records, the actual cost of reproduction may
19 be charged to the current or former employee.

20 This section does not apply to any employer of any
21 person employed by the owner or occupant of a
22 residential dwelling whose duties are incidental to the
23 ownership, maintenance, or use of the dwelling,
24 including the care and supervision of children, or whose
25 duties are personal and not in the course of the trade,
26 business, profession, or occupation of the owner or
27 occupant.

28 (b) Any employee suffering injury as a result of a
29 knowing and intentional failure by an employer to
30 comply with subdivision (a) shall be entitled to recover
31 the greater of all actual damages or one hundred dollars
32 (\$100) for each pay period in which a violation occurs, not
33 exceeding an aggregate penalty of ten thousand dollars
34 (\$10,000), and shall be entitled to an award of costs and
35 reasonable attorney's fees. Any aggrieved employee may
36 seek recovery of the damages or penalty provided for in
37 this section by filing a complaint pursuant to subdivision
38 (a) of Section 98 or bringing a civil action.

1 (c) This section does not apply to the state, or any city,
2 county, city and county, district, or any other
3 governmental entity.

4 SEC. 11. Section 226.3 of the Labor Code is amended
5 to read:

6 226.3. Any employer that violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the
8 amount of two hundred fifty dollars (\$250) per employee
9 per violation in an initial citation and one thousand dollars
10 (\$1,000) per employee for each violation in a subsequent
11 citation, for which the employer fails to provide the
12 employee a wage deduction statement or fails to keep the
13 records required in subdivision (a) of Section 226. In the
14 event that an employer fails to maintain records that
15 identify each employee to whom wages are paid, the
16 penalties under this section shall be computed by
17 multiplying the number of employees employed on the
18 date the penalty is assessed by the 24 semimonthly pay
19 periods of the immediately preceding 12 months, but the
20 employer may affirmatively establish that the evidence
21 supports a lesser penalty based upon proof of a lesser
22 number of affected employees. The civil penalties
23 provided for in this section are in addition to any other
24 penalty provided by law. In enforcing this section, the
25 Labor Commissioner shall take into consideration
26 whether the violation was inadvertent and, in his or her
27 discretion, may decide not to penalize an employer for a
28 first violation when that violation was due to a clerical
29 error or inadvertent mistake.

30 SEC. 12. Section 226.7 is added to the Labor Code, to
31 read:

32 226.7. (a) No employer shall require any employee to
33 work during any meal or rest period mandated by an
34 applicable order of the Industrial Welfare Commission.

35 (b) An employer that violates this section shall be
36 subject to both of the following:

37 (1) A civil penalty of fifty dollars (\$50) per employee
38 per violation.

39 (2) Payment to the aggrieved employee of an amount
40 equal to twice his or her average hourly rate of

1 compensation for the full length of the meal or rest
2 periods during which the employee was required to
3 perform any work. An employee paid on a piecework
4 basis shall be entitled to an amount equal to twice the
5 amount of piecework units earned during those periods,
6 but in no event shall the amount be less than the
7 applicable state minimum wage for the full length of
8 those time periods during which any work was
9 performed.

10 (c) Any employee aggrieved by a violation of this
11 section may do either of the following:

12 (1) Seek recovery of payments under paragraph (2) of
13 subdivision (b) through a complaint filed pursuant to
14 subdivision (a) of Section 98.

15 (2) Seek recovery of payments under paragraph (2) of
16 subdivision (b) in a civil action. The court shall award a
17 prevailing plaintiff in such an action reasonable
18 attorney's fees.

19 SEC. 13. Section 226.8 is added to the Labor Code, to
20 read:

21 226.8. If an employer fails to provide and maintain
22 necessary tools or equipment in violation of an applicable
23 wage order of the Industrial Welfare Commission and an
24 employee purchases the tools or equipment in order to
25 perform his or her work, the employer shall do one of the
26 following, whichever results in a greater sum being paid
27 to the employee:

28 (a) Purchase the tools or equipment from the
29 employee in an amount equal to the price paid by the
30 employee for the tools or equipment.

31 (b) Pay sufficient wages to the employee *for a period*
32 *of six months*, as stated in the applicable wage order, to
33 qualify for an exemption to the wage order.

34 SEC. 14. Section 240 of the Labor Code is amended to
35 read:

36 240. (a) If any employer has been convicted of a
37 violation of any provision of this article, or if any
38 judgment against an employer for unpaid wages, interest,
39 penalties, or other demands for compensation within the
40 jurisdiction of the Labor Commissioner remains

1 unsatisfied for a period of 10 days after the time to appeal
2 therefrom has expired, and no appeal therefrom is then
3 pending, the Labor Commissioner may require the
4 employer to deposit a bond in a sum that the Labor
5 Commissioner deems sufficient and adequate in the
6 circumstances. The bond shall be payable to the Labor
7 Commissioner and shall be conditioned that the
8 employer shall, for a definite future period, not exceeding
9 six months, pay the employees in accordance with the
10 provisions of this article, and shall be further conditioned
11 upon the payment by the employer of any unsatisfied
12 judgment against the employer for unpaid wages,
13 interest, penalties, or other demands within the
14 jurisdiction of the Labor Commissioner.

15 (b) If within 10 days after demand for the bond, which
16 demand may be made by mail, the employer fails to
17 deposit the bond, the Labor Commissioner may bring an
18 action in the name and on behalf of the people of the State
19 of California against the employer in a court of competent
20 jurisdiction to compel the employer to furnish the bond
21 or to cease doing business until the employer has done so.
22 The employer has the burden of proving either that the
23 bond is unnecessary or that the amount demanded is
24 excessive. If the court finds that there is just cause for
25 requiring the bond, and that the bond is reasonably
26 necessary or proper to secure prompt payment of any
27 unsatisfied judgment against the employer for unpaid
28 wages, interest, penalties, or other demands within the
29 jurisdiction of the Labor Commissioner or for the
30 employer's compliance with the provisions of this article,
31 the court may enjoin the employer, whether an
32 individual, partnership, corporation, company, trust, or
33 association, and any other person or persons that may
34 have been or may be concerned with, or in any way
35 participated in, the failure to pay the wages resulting in
36 the judgment, from doing business until the requirement
37 is met, and make other and further orders appropriate to
38 compel compliance with the requirement.

39 SEC. 15. Section 245 is added to the Labor Code, to
40 read:

1 245. Whenever the Labor Commissioner makes an
 2 award against an employer pursuant to this chapter, upon
 3 finding that the employer has engaged in a pattern and
 4 practice of violating wage and hours laws, the Labor
 5 Commissioner shall also make an order requiring the
 6 employer to post a notice at the place of employment
 7 where the affected employees are or were employed
 8 containing a description of the nature of the violation, a
 9 declaration by the employer stating that it will not engage
 10 in those unlawful acts in the future, and the address and
 11 telephone number of the Labor Commissioner. The
 12 notice, on a form approved by the Labor Commissioner,
 13 shall be posted conspicuously by the employer for a
 14 period of not less than 60 days. The notice shall bear the
 15 seal of the State of California and of the Labor
 16 Commissioner and the signature of the employer or a
 17 representative or agent of the employer. The cost of
 18 producing and posting the notice shall be paid by the
 19 employer. The failure or refusal of an employer to post
 20 the notice in accordance with this section shall subject the
 21 employer to a civil penalty, to be assessed and collected
 22 by the Labor Commissioner, in the amount of five
 23 hundred dollars (\$500) for each instance in which the
 24 employer fails or refuses to post a notice as required by
 25 this section, and the employer shall be required to
 26 properly post the notice.

27 SEC. 16. Section 350 of the Labor Code is amended to
 28 read:

29 350. As used in this article, unless the context indicates
 30 otherwise:

31 (a) "Employer" means every person engaged in any
 32 business or enterprise in this state that has one or more
 33 persons in service under any appointment, contract of
 34 hire, or apprenticeship, express or implied, oral or
 35 written, irrespective of whether the person is the owner
 36 of the business or is operating on a concessionaire or other
 37 basis.

38 (b) "Employee" means every person, including aliens
 39 and minors, rendering actual service in any business for
 40 an employer, whether gratuitously or for wages or pay,

1 whether the wages or pay are measured by the standard
2 of time, piece, task, commission, or other method of
3 calculation, and whether the service is rendered on a
4 commission, concessionaire, or other basis.

5 (c) “Employing” includes hiring, or in any way
6 contracting for, the services of an employee.

7 (d) “Agent” means every person other than the
8 employer having the authority to hire or discharge any
9 employee or supervise, direct, or control the acts of
10 employees.

11 (e) “Gratuity” includes any tip, gratuity, money, or
12 part thereof that has been paid or given to or left for an
13 employee by a patron of a business over and above the
14 actual amount due the business for services rendered or
15 for goods, food, drink, or articles sold or served to the
16 patron. Any amounts paid directly by a patron to a dancer
17 employed by an employer subject to Industrial Welfare
18 Commission Order No. 5 or 10 shall be deemed a gratuity.

19 (f) “Business” means any business establishment or
20 enterprise, regardless of where conducted.

21 SEC. 17. Section 351 of the Labor Code is amended to
22 read:

23 351. No employer or agent shall collect, take, or
24 receive any gratuity or a part thereof that is paid, given
25 to, or left for an employee by a patron, or deduct any
26 amount from wages due an employee on account of a
27 gratuity, or require an employee to credit the amount, or
28 any part thereof, of a gratuity against and as a part of the
29 wages due the employee from the employer. Every
30 gratuity is hereby declared to be the sole property of the
31 employee or employees to whom it was paid, given, or left
32 for. An employer that permits patrons to pay gratuities by
33 credit card shall pay the employees the full amount of the
34 gratuity that the patron indicated on the credit card slip,
35 without any deductions for any credit card payment
36 processing fees or costs that may be charged to the
37 employer by the credit card company. Payment of
38 gratuities made by patrons using credit cards shall be
39 made to the employees not later than the next regular

1 payday following the date the patron authorized the
2 credit card payment.

3 SEC. 18. Section 1174 of the Labor Code is amended
4 to read:

5 1174. Every person employing labor in this state shall:

6 (a) Furnish to the commission, at its request, reports
7 or information that the commission requires to carry out
8 this chapter. The reports and information shall be verified
9 if required by the commission or any member thereof.

10 (b) Allow any member of the commission or the
11 employees of the Division of Labor Standards
12 Enforcement free access to the place of business or
13 employment of the person to secure any information or
14 make any investigation that they are authorized by this
15 chapter to ascertain or make. The commission may
16 inspect or make excerpts, relating to the employment of
17 employees, from the books, reports, contracts, payrolls,
18 documents, or papers of the person.

19 (c) Keep a record showing the names and addresses of
20 all employees employed and the ages of all minors.

21 (d) Keep, at a central location in the state or at the
22 plants or establishments at which employees are
23 employed, payroll records showing the hours worked
24 daily by and the wages paid to, and the number of
25 piece-rate units earned by and any applicable piece rate
26 paid to, employees employed at the respective plants or
27 establishments. These records shall be kept in accordance
28 with rules established for this purpose by the commission,
29 but in any case shall be kept on file for not less than two
30 years.

31 SEC. 19. Section 1174.5 of the Labor Code is amended
32 to read:

33 1174.5. Any person employing labor who willfully fails
34 to maintain the records required by subdivision (c) of
35 Section 1174 or accurate and complete records required
36 by subdivision (d) of Section 1174 or by the applicable
37 wage orders of the Industrial Welfare Commission, or to
38 allow any member of the commission or employees of the
39 division to inspect records pursuant to subdivision (b) of
40 Section 1174, shall be subject to a civil penalty of one

1 hundred dollars (\$100) per employee for each payroll
2 period during which the violation occurs, up to a
3 maximum period of three years.

4 SEC. 20. Section 1194.2 of the Labor Code is amended
5 to read:

6 1194.2. (a) In any proceeding before the Labor
7 Commissioner, or any action under Section 1193.6 or 1194,
8 to recover wages because of the payment of a wage less
9 than the minimum wage fixed by an order of the
10 commission, an employee shall be entitled additionally to
11 recover liquidated damages in an amount equal to the
12 wages unlawfully unpaid and interest thereon. Nothing in
13 this subdivision shall be construed to authorize the
14 recovery of liquidated damages for failure to pay
15 overtime compensation.

16 (b) Notwithstanding subdivision (a), if the employer
17 demonstrates to the satisfaction of the Labor
18 Commissioner or the court that the act or omission giving
19 rise to the action was in good faith and that the employer
20 had reasonable grounds for believing that the act or
21 omission was not a violation of any provision of the Labor
22 Code relating to minimum wage, or an order of the
23 commission, the Labor Commissioner or the court may,
24 in the discretion of the Labor Commissioner or the court
25 as the case may be, refuse to award liquidated damages
26 or award any amount of liquidated damages not
27 exceeding the amount specified in subdivision (a).

28 (c) This section only applies to civil actions
29 commenced on or after January 1, 1992.

30 SEC. 21. Section 1197.1 of the Labor Code is amended
31 to read:

32 1197.1. (a) Any employer or other person, acting
33 either individually or as an officer, agent, or employee of
34 another person, who pays or causes to be paid to any
35 employee a wage less than the minimum fixed by an
36 order of the commission shall be subject to a civil penalty
37 and restitution as follows:

38 (1) For any initial violation that is intentionally
39 committed, fifty dollars (\$50) for each underpaid
40 employee for each pay period for which the employee is

1 underpaid, in addition to an amount sufficient to recover,
2 on behalf of the affected employees, all underpaid wages,
3 any owed interest thereon, and statutory liquidated
4 damages.

5 (2) For each subsequent violation for the same specific
6 offense, two hundred fifty dollars (\$250) for each
7 underpaid employee for each pay period for which the
8 employee is underpaid, regardless of whether the initial
9 violation is intentionally committed, in addition to an
10 amount sufficient to recover, on behalf of the affected
11 employees, all underpaid wages, any interest owed
12 thereon, and statutory liquidated damages.

13 (b) If, upon inspection or investigation, the Labor
14 Commissioner determines that a person has paid or
15 caused to be paid a wage less than the minimum, the
16 Labor Commissioner may issue a citation to the person in
17 violation. The citation may be served personally or by
18 registered mail in accordance with subdivision (c) of
19 Section 11505 of the Government Code. Each citation
20 shall be in writing and shall describe the nature of the
21 violation, including reference to the statutory provision
22 alleged to have been violated. The Labor Commissioner
23 promptly shall take all appropriate action, in accordance
24 with this section, to enforce the citation and to recover
25 the civil penalty and restitution assessed in connection
26 with the citation.

27 (c) If a person desires to contest a citation or the
28 proposed assessment of a civil penalty or restitution
29 therefor, the person shall, within 15 business days after
30 service of the citation, notify the office of the Labor
31 Commissioner that appears on the citation of his or her
32 request for an informal hearing. The Labor
33 Commissioner or his or her deputy or agent shall, within
34 30 days, hold a hearing at the conclusion of which the
35 citation or proposed assessment of a civil penalty and
36 restitution shall be affirmed, modified, or dismissed.

37 The decision of the Labor Commissioner shall consist of
38 a notice of findings, findings, and an order, all of which
39 shall be served on all parties to the hearing within 15 days
40 after the hearing by regular first-class mail at the last

1 known address of the party on file with the Labor
2 Commissioner. Service shall be completed pursuant to
3 Section 1013 of the Code of Civil Procedure. Any amount
4 found due by the Labor Commissioner as a result of a
5 hearing shall become due and payable 45 days after notice
6 of the findings and written findings and order have been
7 mailed to the party assessed. A writ of mandate may be
8 taken from this finding to the appropriate superior court.
9 The party shall pay any judgment and costs ultimately
10 rendered by the court against the party for the
11 assessment. The writ shall be taken within 45 days of
12 service of the notice of findings, findings, and order
13 thereon.

14 (d) A person to whom a citation has been issued may,
15 in lieu of contesting a citation pursuant to this section,
16 transmit to the office of the Labor Commissioner
17 designated on the citation the amount of the civil penalty
18 and restitution specified for the violation within 15
19 business days after issuance of the citation.

20 (e) When no petition objecting to a citation or the
21 proposed assessment of a civil penalty and restitution is
22 filed, a certified copy of the citation or proposed civil
23 penalty and restitution may be filed by the Labor
24 Commissioner in the office of the clerk of the superior
25 court in any county in which the person assessed has or
26 had a place of business. The clerk, immediately upon the
27 filing, shall enter judgment for the state against the
28 person assessed in the amount shown on the citation or
29 proposed assessment of a civil penalty and restitution.

30 (f) When findings and the order thereon are made
31 affirming or modifying a citation or proposed assessment
32 of a civil penalty and restitution after hearing, a certified
33 copy of these findings and the order entered thereon may
34 be entered by the Labor Commissioner in the office of the
35 clerk of the superior court in any county in which the
36 person assessed has property or in which the person
37 assessed has or had a place of business. The clerk,
38 immediately upon the filing, shall enter judgment for the
39 state against the person assessed in the amount shown on
40 the certified order.



1 (g) A judgment entered pursuant to this section shall
2 bear the same rate of interest and shall have the same
3 effect as other judgments and be given the same
4 preference allowed by the law on other judgments
5 rendered for claims for taxes. The clerk shall make no
6 charge for the service provided by this section to be
7 performed by him or her.

8 (h) The civil penalties and restitution provided for in
9 this section are in addition to any other penalty or remedy
10 provided by law.

11 (i) This section shall not apply to any order of the
12 commission relating to household occupations.

13 SEC. 22. No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution because the only costs that may be incurred
16 by a local agency or school district will be incurred
17 because this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition
21 of a crime within the meaning of Section 6 of Article
22 XIII B of the California Constitution.

